

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRIAN JOE COURTER, et al.

Plaintiffs,

v.

CYTODYN, INC., et al.

Defendants.

CASE NO. C21-5190 BHS

ORDER DENYING MOVANT
KODALI'S MOTION FOR
RECONSIDERATION

This matter comes before the Court on Movant Dr. Smila Kodali's motion for reconsideration. Dkt. 66. The Court has considered the briefings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. FACTUAL & PROCEDURAL BACKGROUND

This action is a putative securities class action lawsuit against Defendant CytoDyn, Inc. and two of its executive officers, Defendants Nader Pourhassen and Michael Mulholland. Dkt. 1. The action asserts claims on behalf of a proposed class of all persons or entities who purchased or otherwise acquired CytoDyn common stock between March 27, 2020 and March 9, 2021 (the "Class Period"). *Id.* ¶ 1.

1 Then-plaintiff Angela Lewis filed this action on March 17, 2021, alleging
2 violations of § 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”), 15
3 U.S.C. § 78j(b), and violations of § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a). Dkt. 1.
4 On March 18, 2021, Lewis (the first-filed Plaintiff) published notice pursuant to the
5 Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-4(a)(1)–
6 (3)(B)(i), over *Globe Newswire*, a widely circulated national business-oriented wire
7 service. *See* Dkt. 24-4. Members of the purported class have 60 days after the date on
8 which the notice is published to move the court to serve as lead plaintiff. 15 U.S.C.
9 § 78u-4(a)(3)(A)(i)(II).

10 On May 17, 2021, motions to consolidate cases and to appoint lead plaintiff and
11 approve selection of counsel were filed by seven putative lead plaintiffs. Dkts. 12, 14, 17,
12 19, 22, 26. Three of the movants filed notices of non-opposition, Dkts. 41, 43, 44, one
13 movant withdrew his motion, Dkt. 42, and one movant did not respond. The remaining
14 movants for lead plaintiff were Movant Smila Kodali and Movant Brian Joe Courter and
15 Courter and Sons, LLC (collectively “Courter”).

16 Kodali and Courter hotly contested who suffered the greater loss and therefore had
17 the largest financial interest in the relief sought by the class. On August 19, 2021, the
18 Court granted Courter’s motion for appointment as lead plaintiff and approval of
19 selection of counsel, concluding that Courter had the largest financial interest and was the
20 most adequate plaintiff, and denied Kodali’s motion. Dkt. 65.

21 On August 25, 2021, Kodali filed the instant motion for reconsideration, arguing
22 that the Court committed manifest error by ignoring Courter’s windfall gains during the

1 Class Period and that the Court should appoint her as lead plaintiff. Dkt. 66. The Court
2 ordered Courter to respond, Dkt. 67, and Courter did so on September 7, 2021, Dkt. 69.
3 On September 10, 2021, Kodali replied. Dkt. 71.

4 II. DISCUSSION

5 Motions for reconsideration are governed by Local Civil Rule 7(h), which
6 provides as follows:

7 Motions for reconsideration are disfavored. The court will ordinarily deny
8 such motions in the absence of a showing of manifest error in the prior
9 ruling or a showing of new facts or legal authority which could not have
10 been brought to its attention earlier with reasonable diligence.

11 LCR 7(h)(1).

12 Reconsideration is an “extraordinary remedy, to be used sparingly in the interests
13 of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Est. of Bishop*,
14 229 F.3d 877, 890 (9th Cir. 2000). “[A] motion for reconsideration should not be granted,
15 absent highly unusual circumstances, unless the district court is presented with newly
16 discovered evidence, committed clear error, or if there is an intervening change in the
17 controlling law.” *Marlyn Natraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d
18 873, 880 (9th Cir. 2009). Neither the Local Civil Rules nor the Federal Rules of Civil
19 Procedure, which allow for motions for reconsideration, are intended to provide litigants
20 with a second bite at the apple. A motion for reconsideration should not be used to ask a
21 court to rethink what the court had already thought through—rightly or wrongly. *Defs. of*
22 *Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D. Ariz. 1995). Mere disagreement with a
previous order is an insufficient basis for reconsideration, and reconsideration may not be

1 based on evidence and legal arguments that could have been presented at the time of the
2 challenged decision. *Haw. Stevedores, Inc. v. HT & T Co.*, 363 F. Supp. 2d 1253, 1269
3 (D. Haw. 2005). “Whether or not to grant reconsideration is committed to the sound
4 discretion of the court.” *Navajo Nation v. Confederated Tribes & Bands of the Yakima*
5 *Indian Nation*, 331 F.3d 1041, 1046 (9th Cir. 2003).

6 Kodali’s motion does not meet this standard. As Courter highlights, Kodali
7 reasserts many of the same arguments the Court considered in the underlying Order.
8 Compare Dkt. 65 at 7–12 (discussing, *inter alia*, *Cambridge Ret. Sys. v. Mednax, Inc.*,
9 No. 18-61572-CIV-Dimitrouleas/Snow, 2018 WL 8804814 (S.D. Fla. Dec. 6, 2018), and
10 *Ferreira v. Funko, Inc.*, No. 2:20-cv-02319-VAP-PJWx, 2020 WL 3246328 (C.D. Cal.
11 June 11, 2020)) with Dkt. 66 at 4; Dkt. 71 at 3–7 (discussing the same). While Kodali
12 disagrees with the ultimate outcome here, she has not made a showing that the Court
13 committed manifest error in its analysis of which movant had the largest financial
14 interest. The Court determined, and reaffirms here, that Courter is not a net gainer and
15 suffered the largest loss during the Class Period based on a last in, first out methodology,
16 even though he sold more shares than he purchased. *See* Dkt. 65 at 9–10.

17 Additionally, Kodali raises new arguments and submits new evidence in her reply.
18 *See* Dkts. 71, 72. These arguments and evidence could have been presented at the time of
19 the challenged decision, and thus the Court will not consider them at this juncture. *Kona*
20 *Enter.*, 229 F.3d at 890 (motion for reconsideration “may *not* be used to raise arguments
21 or present evidence for the first time when they could reasonably have been raised earlier
22 in the litigation.” (emphasis in original)).

1 In sum, Kodali has not met her burden in establishing that reconsideration on the
2 Court's previous order appointing Courter as lead plaintiff is warranted here.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Movant Kodali's motion for
5 reconsideration, Dkt. 66, is **DENIED**.

6 Dated this 27th day of October, 2021.

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9 BENJAMIN H. SETTLE
United States District Judge